



City of Carmel

BOARD OF ZONING APPEALS

February 25, 2002

The regularly scheduled meeting was held at 7:00 PM in the Council Chambers of Carmel City Hall on February 25, 2002. Those members in attendance: Leo Dierckman, Michael Mohr, Earlene Plavchak, and Pat Rice, thereby establishing a quorum.

Department of Community Services Staff in attendance: Director Michael Hollibaugh; Laurence Lillig; Jeff Kendall, Building Commissioner; and Adrienne Keeling, Code Enforcement Officer. John Molitor, Legal Counsel, was also present.

The minutes of the January 2002 meeting were approved as submitted.

John Molitor reported on pending litigation discussed in the Executive Session of the Board held at 6:15 PM this evening in the Caucus Rooms.

Laurence Lillig reported that in addition to those items appearing on the Agenda as Tabled, Bauer Commercial Park is also Tabled for this evening's meeting.

H. Public Hearing:

1h-3h. *These Items Currently Tabled:*

Lakes at Hazel Dell, Section 1, Lot 16 (UV-133-00; V-156-00; V-157-00)

Petitioner seeks a Use Variance of *Section 5.1: Permitted Uses* in order to establish a temporary model home/sales office. Petitioner also seeks Developmental Standards Variances of *Sections 25.7.02-7(c): Maximum Sign Area; and 25.7.01-7(d): Maximum Sign Height*. The site is zoned S-1/Residence – Low Density.

Filed by Joseph M. Scimia of Baker & Daniels for Zaring Homes of Indiana.

4h. *This Item Currently Tabled:*

Lakes at Hazel Dell, Section 1, Lot 17 (UV-134-00)

Petitioner seeks a Use Variance of *Section 5.1: Permitted Uses* in order to establish a temporary model home/sales office. The site is zoned S-1/Residence – Low Density.

Filed by Joseph M. Scimia of Baker & Daniels for Zaring Homes of Indiana.

5h-8h. *These Items Currently Tabled:*

Lakes at Hazel Dell, Section 1, Lot 237 (UV-135-00; V-153-00; V-154-00; V-155-00)

Petitioner seeks a Use Variance of *Section 5.1: Permitted Uses* in order to establish a temporary model home/sales office. Petitioner also seeks Developmental Standards Variances of *Sections 25.7.02-7(b): Number and Type of Signs; 25.7.02-7(c): Maximum Sign Area; and 25.7.02-7(d): Maximum Sign Height*. The site is zoned S-1/Residence – Low Density.

Filed by Joseph M. Scimia of Baker & Daniels for Zaring Homes of Indiana.

9h. *This Item Currently Tabled:*

Lakes at Hazel Dell, Section 1, Lot 238 (UV-136-00)

Petitioner seeks a Use Variance of *Section 5.1: Permitted Uses* in order to establish a temporary model home/sales office. The site is zoned S-1/Residence – Low Density.

Filed by Joseph M. Scimia of Baker & Daniels for Zaring Homes of Indiana.

10h. *This Item Currently Tabled at Petitioner's Request:*

WTF - Sprint Spectrum (A-97-01)

Appellant (an Interested Party) wishes to appeal the decision of the Director regarding the collocation of a WTF antenna on an existing private radio tower. The site is located at 1388 Queen's Way. The site is zoned S-1/Residence – Very Low Density.

Filed by J. Taggart Birge of Bose McKinney & Evans for Richard Deer.

11h. **Northwood Hills, Section 1, Lot 6 (SU-161-01)**

Petitioner seeks approval of a Special Use to continue a commercial kennel use originally Approved with Conditions for a period of eighteen (18) months on May 22, 2000, as *Docket No. SU-19-00*. The site is located at 6320 Northwood Drive. The site is zoned S-1/Residence – Low Density.

Filed by Gerald & Evelyn J. Easton.

Gerald Easton, 6320 Northwood Drive, Carmel 46033 addressed the Board regarding his petition to continue a commercial kennel use at his home. Mrs. Easton was unable to attend the meeting.

Mr. Easton stated he and his wife have 9 dogs and they are requesting permission to keep them until they expire. The dogs are older, 12 years, some 13 years. The dogs are licensed, have annual veterinary checks, and all have their shots. Mr. Easton denies a commercial kennel, since dogs are not being raised for sale or profit.

In all of the time the dogs have been licensed, Mr. Easton said they were never questioned as to the number of dogs in their possession. Last year, when they renewed the license, they were told they did not have a minor kennel and each dog must be licensed individually; the charge was \$50. This year, for the first time, the license specifies a three dog limit in areas zoned residential. Mr. Easton suggested the City and the Township get together in their requirements in language that dog owners would understand.

Until two years ago, Mr. Easton said he and his wife had never had a problem or complaint. The current situation is a personal issue and the dogs are being used as pawns. The dogs are not adoptable—the dogs are too old. The Eastons want to allow the dogs to live out their lives naturally rather than being euthanized.

Members of the public were invited to speak in favor of the petition; the following appeared:

Remonstrance:

Robert Bauxill, 6330 Northwood Drive, and wife Peggy, are in support of the Eastons. They have been neighbors to the Eastons for 33 years and say the Eastons are good neighbors. The

dogs are not a problem now and have not been for the past 12 years. The dogs are well cared for, and do not cause problems. Mr. Bauxill also took exception to the term “commercial kennel.” Mr. Bauxill urged the Board to allow the Eastons to continue to care for the dogs in a loving manner and let attrition take its course.

Donald Woods, 12012 Pebblebrook Lane, appeared before the Board in support of the Eastons. The dogs are not used for commercial enterprise and have not caused any problems. Mr. Woods asked the Board to allow the Eastons request.

???? 12337 Carthage Drive (Indianapolis ??) spoke in support of the Eastons and asked that their petition be allowed. The dogs are older, not as active and not as loud as younger dogs and are not a problem.

Opposition:

Cathy Kessler, 6220 Northwood Drive, two homes away from the Eastons. Ms. Kessler said the dogs are better than they were, but they are still outside several times a day and are a nuisance. The dogs bark when the Kesslers are outside, and when there is activity on the golf course. Ms. Kessler stated the garage door is still open and animals are allowed to roam in and out. Ms. Kessler asked that the petition not be allowed.

Vicki Miller, 6310 Northwood Drive, next-door neighbor to the Eastons for 15 years. At the time the Eastons moved into the neighborhood, they only had two or three dogs. As the years progressed, they have accumulated more dogs and when the number increased to 16 or 17, it became unbearable. The Millers like to be outdoors—gardening, cooking out, entertaining, etc., and it became impossible to do so with the dogs barking all of the time. The Millers feel their quality of life has been greatly diminished as the number of dogs has increased. There are 3 dogs that are at least under 5 years of age, and they bark all of the time, sometimes at 3:00 AM. The Millers do not want the Eastons to lose their pets; however, they have a right to live in their back yard. There must be some resolution of the situation.

Rebuttal:

Gerald Easton said there has been no food in the garage for two years, and they certainly have the right to leave their garage door open. There is nothing in the garage to draw animals. Mr. Easton suspects the cats came from the barn at Plum Creek, but states he does not feed them. Mr. Easton said his son works at the golf course, and there has never been a complaint filed with them regarding barking dogs. The last time the dogs are out for the evening is 9:00 PM and out first thing in the morning. The dogs have never been out at 3:00 AM.

Department Recommendation, Laurence Lillig reiterated the Ordinance definition of a commercial kennel as being any lot on which four or more dogs or small animals at least 4 months of age are kept. There is no requirement of commercial sale involved. Mr. Lillig reminded the Board that the number of cats on the premises also counts toward the total number of animals present. The Department believes there are nine dogs and two cats, a total of 11 animals, on the site. If the Board does permit the Special Use to continue, the Department recommends written commitments be required as part of any such approval rather than

conditions. A limitation on the number of animals at this site and a time limit would negate a kennel.

Ms. Rice had several questions for the petitioner: the age of the youngest dog; the number of cats; and clean-up of the yard.

Ms. Rice asked Vicki Miller how many pets she had (one dog, two cats), and where they are fed (in the garage). The Millers have a cat door, but it has been kept closed because of the situation with the Eastons cats.

Ms. Rice asked Ms. Kessler what she would recommend be done with the Eastons dogs? Ms. Kessler suggested they be given homes for the betterment of the neighborhood.

Leo Dierckman said he had actually driven by the Easton property 3 or 4 times, and the garage door was open. The entire portion of the backyard is not visible from the street, but cats were seen about. Mr. Dierckman had stopped at the Millers and was in their backyard for the purpose of viewing the Eastons backyard; however, the case was not discussed. This is a difficult situation for all concerned.

Mr. Easton said the nine dogs range in age from 6 to 13/14 years. The age of the cats is hard to determine.

Ms. Rice agreed that this is, indeed, a difficult decision and situation.

Michael Mohr then closed the public hearing.

Leo Dierckman moved for approval of **Docket No. SU-161-01, Northwood Hills, Section 1**, with the following **written commitments**: **1)** No open food outside—animals are to be fed indoors. (garage) **2)** No more than 2 dogs outside at any one time, and a minimum of one (1) owner must be on the premises during those times. **3)** By the end of the eighteen-month approval period, the owner must have reduced the number of animals to three (3) dogs and/or cats in compliance with the Ordinance. **4)** At the end of the eighteen-month period, the owner must either return to the Board at its Monday, July 28, 2003 meeting to demonstrate that they have come into compliance with the Ordinance, OR apply for a new Special Use approval in time to be heard at the July 28, 2003 meeting. **5)** Between the hours of 9:00 AM and 11:00 AM, all 9 dogs will be permitted outdoors for a 30-minute period within that time frame. **6)** The Eastons agree to contact the Sheriff, Humane Society or other appropriate body when stray cats or stray dogs appear on the property. **7)** The Eastons agree not to acquire or adopt any additional animals—(any dog or cat that dies will not be replaced!). The motion was seconded by Pat Rice and **APPROVED** 3 in favor, one opposed (Michael Mohr).

12-13h. **Bauer Commercial - World Wide Motors (V-163-01; V-164-01)**

Petitioner seeks approval to vary *Section 25.7.02-7(b)* in order to establish a third Identification Sign. The petitioner also seeks approval to vary *Section 25.7.02-7(e)* in order to establish a Ground Identification Sign within the setback from the proposed right-of-way as identified on the Thoroughfare Plan. The site is located at 3900 East 96th Street. The site is zoned B-3/Business.

Filed by Michael T. Crowley of The Reis Law Firm for World Wide Motors, Inc.

I. Old Business.

1i. Lakes at Hazel Dell Subdivision, Section 1, Common Area 3 (SUA-63-01)

Petitioner seeks to amend the lifeguarding commitment made as part of the Board's approval (*Docket No. SU-37-99; approved August 23, 1999*) of the amenity area. The site is located at 12474 Dellfield Boulevard West. The site is zoned S-1/residence.

Filed by Joseph M. Scimia of Baker & Daniels for Zaring Homes of Indiana.

The petitioner was not in attendance for this item. There was discussion among the Board Members, since this item has been on the Agenda "forever."

Leo Dierckman moved to dismiss **Docket No. SUA-63-01, Lakes at Hazel Dell Subdivision, Section 1, Common Area 3**, for lack of prosecution. The motion was seconded by Earlene Playchak and **APPROVED 4-0**.

There being no further business to come before the Board, the meeting was adjourned at 8:04 PM.

Michael Mohr, President

Ramona Hancock, Secretary